

AMENDED IN SENATE JULY 17, 2007

AMENDED IN SENATE JUNE 6, 2007

AMENDED IN ASSEMBLY APRIL 17, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 632

Introduced by Assembly Member Salas

February 21, 2007

An act to amend Section 1278.5 of the Health and Safety Code, relating to health care facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 632, as amended, Salas. Health care facilities: whistleblower protections.

Existing law provides for the licensure and regulation of health care facilities, as defined, by the State Department of Public Health. Under existing law, a health facility is prohibited from retaliating or discriminating against an employee of a health facility that has presented or initiated a complaint or initiated, participated, or cooperated in an investigation or proceeding of a government entity relating to the care, services, or conditions of the facility. Existing law makes the violation of these provisions a crime and subject to the assessment of a civil penalty.

This bill would prohibit a health facility; from discriminating or retaliating against any patient, employee, a member of the facility's medical staff, or any other health care worker of the facility ~~who~~ *because that person* (1) has presented a grievance, complaint, or report to an entity or agency responsible for accrediting or evaluating the facility or to any other governmental entity; or (2) has initiated, participated,

or cooperated in an investigation or administrative proceeding related to the quality of care, services, or conditions at the facility, as provided.

This bill would provide that an employee who has been discriminated against in employment in violation of those provisions shall be entitled to reinstatement, reimbursement for lost wages and work benefits caused by the acts of the employer, or to any remedy deemed warranted by the court pursuant to those provisions, or to any applicable provisions of statutory or common law, as specified. The bill would also entitle a health care worker who has been discriminated against, in violation of those provisions, and who prevails in court, to restitution and any legal costs associated with pursuing the case, or to any remedy deemed warranted by the court pursuant to those provisions, or any other applicable statutory or common law.

Because the bill would expand the definition of a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1278.5 of the Health and Safety Code is
- 2 amended to read:
- 3 1278.5. (a) The Legislature finds and declares that it is the
- 4 public policy of the State of California to encourage patients,
- 5 nurses, members of the medical staff, and other health care workers
- 6 to notify government entities of suspected unsafe patient care and
- 7 conditions. The Legislature encourages this reporting in order to
- 8 protect patients and in order to assist those government entities
- 9 charged with ensuring that health care is safe. The Legislature
- 10 finds and declares that whistleblower protections apply primarily
- 11 to issues relating to the care, services, and conditions of a facility
- 12 and are not intended to conflict with existing provisions in state
- 13 and federal law relating to employee and employer relations.
- 14 (b) (1) No health facility shall discriminate or retaliate, in any
- 15 manner, against any patient, employee, member of the medical

1 staff, or any other health care worker of the health facility—~~who~~
2 *because that person* has done either of the following:

3 (A) Presented a grievance, complaint, or report to the facility,
4 to an entity or agency responsible for accrediting or evaluating the
5 facility, or the medical staff of the facility, or to any other
6 governmental entity.

7 (B) Has initiated, participated, or cooperated in an investigation
8 or administrative proceeding related to, the quality of care, services,
9 or conditions at the facility that is carried out by an entity or agency
10 responsible for accrediting or evaluating the facility or its medical
11 staff, or governmental entity.

12 (2) No entity that owns or operates a health facility, or which
13 owns or operates any other health facility, shall discriminate or
14 retaliate against any person who has taken any actions pursuant to
15 this subdivision.

16 (3) A violation of this section shall be subject to a civil penalty
17 of not more than twenty-five thousand dollars (\$25,000). The civil
18 penalty shall be assessed and recovered through the same
19 administrative process set forth in Chapter 2.4 (commencing with
20 Section 1417) for long-term health care facilities.

21 (c) Any type of discriminatory treatment of a patient by whom,
22 or upon whose behalf, a grievance or complaint has been submitted,
23 directly or indirectly, to a governmental entity or received by a
24 health facility administrator within 180 days of the filing of the
25 grievance or complaint, shall raise a rebuttable presumption that
26 the action was taken by the health facility in retaliation for the
27 filing of the grievance or complaint.

28 (d) (1) There shall be a rebuttable presumption that
29 discriminatory action was taken by the health facility, or by the
30 entity that owns or operates that health facility, or that owns or
31 operates any other health facility, in retaliation against an
32 employee, member of the medical staff, or any other health care
33 worker of the facility, if responsible staff at the facility or the entity
34 that owns or operates the facility had knowledge of the actions,
35 participation, or cooperation of the person responsible for any acts
36 described in paragraph (1) of subdivision (b), and the
37 discriminatory action occurs within 120 days of the filing of the
38 grievance or complaint by the employee, member of the medical
39 staff or any other health care worker of the facility.

(2) For purposes of this section, discriminatory treatment of an employee, member of the medical staff, or any other health care worker includes, but is not limited to, discharge, demotion, suspension, or any other unfavorable changes in the terms or conditions of employment or of the privileges of the employee, member of the medical staff, or any other health care worker of the health care facility, or the threat of any of these actions.

(e) The presumptions in subdivisions (c) and (d) shall be presumptions affecting the burden of producing evidence as provided in Section 603 of the Evidence Code.

(f) Any person who willfully violates this section is guilty of a misdemeanor punishable by a fine of not more than twenty thousand dollars (\$20,000).

(g) An employee who has been discriminated against in employment pursuant to this section shall be entitled to reinstatement, reimbursement for lost wages and work benefits caused by the acts of the employer, and the legal costs associated with pursuing the case, *or to any remedy deemed warranted by the court pursuant to this chapter or any other applicable provision of statutory or common law.* A health care worker who has been discriminated against pursuant to this section shall be entitled to reinstatement, reimbursement for lost income resulting from any change in the terms or conditions of his or her privileges caused by the acts of the facility or the entity that owns or operates a health facility or any other health facility that is owned or operated by that entity, and the legal costs associated with pursuing the case, *or to any remedy deemed warranted by the court pursuant to this chapter or any other applicable provision of statutory or common law.* A member of the medical staff who has been discriminated against pursuant to this section shall be entitled to reinstatement, reimbursement for lost income resulting from any change in the terms or conditions of his or her privileges caused by the acts of the facility or the entity that owns or operates a health facility or any other health facility that is owned or operated by that entity, and the legal costs associated with pursuing the case, *or to any remedy deemed warranted by the court pursuant to this chapter or any other applicable provision of statutory or common law.*

(h) *The medical staff of the health facility may petition the court for an injunction to protect a peer review committee from being required to comply with evidentiary demands on pending peer review matters from the complainant in an action pursuant to this section, if the evidentiary demands from the complainant would impede the peer review process or endanger the health and safety of patients of the health facility during the peer review process.*

~~(h)~~

(i) For purposes of this section, “health facility” means any facility defined under this chapter, including, but not limited to, the facility’s administrative personnel, employees, boards, and committees of the board, and medical staff.

~~(i)~~

(j) This section shall not apply to an inmate of a correctional facility or juvenile facility of the Department of Corrections and Rehabilitation, or to an inmate housed in a local detention facility including a county jail or a juvenile hall, juvenile camp, or other juvenile detention facility.

~~(j)~~

(k) This section shall not apply to a health facility that is a long-term health care facility, as defined in Section 1418. A health facility that is a long-term health care facility shall remain subject to Section 1432.

~~(k)~~

(l) Nothing in this section abrogates or limits any other theory of liability or remedy otherwise available at law.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.